

TODD KIM
Assistant Attorney General
Environment & Natural Resources Division
DUSTIN J. WEISMAN (CO Bar. No. 44818)
ERIKA NORMAN (CA Bar No. 268425)
Trial Attorneys
United States Department of Justice
Natural Resources Section
150 M Street NE
Washington, DC 20002
Telephone: (202) 598-9063 (Weisman)
Telephone: (202) 598-0475 (Norman)
Facsimile: (202) 305-0506
dustin.weisman@usdoj.gov
erika.norman@usdoj.gov

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PENDLETON DIVISION**

BLUE MOUNTAINS BIODIVERSITY
PROJECT,

Plaintiff,

v.

CRAIG P. TURLOCK, Forest Supervisor,
Malheur National Forest, in his official
capacity; and UNITED STATES FOREST
SERVICE, an agency of the United States
Department of Agriculture,

Defendants.

No. 2:21-cv-1033-HA

**JOINT PROPOSED INITIAL CASE
MANAGEMENT SCHEDULE**

The parties jointly propose a schedule for the filing of, and briefing of any potential challenges to, the administrative record, which the parties propose Defendants to lodge on October 8, 2021. In the event no record-related motions are filed, the parties also propose a schedule for briefing cross-motions for summary judgment.

The parties agree that the claims in this case involve review of an administrative record and are therefore exempt from initial disclosures and discovery planning requirements set forth in the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 26(a)(1)(B)(i), 26(f)(1). In administrative record review cases, judicial review does not concern disputed facts that the court must resolve. Instead, “the function of the district court is to determine whether or not, as a matter of law, the evidence in the Administrative Record permitted the agency to make the decision it did,” and “summary judgment is an appropriate mechanism for deciding the legal question of whether the agency could reasonably have found the facts as it did. *Occidental Eng’g Co. v. INS*, 753 F.2d 766, 769-70 (9th Cir. 1985).

Work on the Project, including cutting and hauling timber as well as roadwork, commenced in multiple units within the Project area in late May 2021. On July 16, 2021, the Malheur National Forest entered an Industrial Fire Precaution Level IV shutdown, under which no additional harvesting of timber was permitted. On September 30, 2021, the Forest entered Industrial Fire Precaution Level I, under which all project activities can proceed but the contractor must conduct a fire watch for one hour after activity, but there are no other restrictions on activities. As of the date of this filing, timber harvesting has not yet resumed on the Project. Even assuming operations resume, Plaintiff does not anticipate there will be a need to seek emergency relief.

The parties conferred and jointly propose the following initial case management schedule:

- October 8, 2021: Defendants will lodge the administrative record with the Court and provide a copy to Plaintiff’s counsel on a USB drive. Plaintiff will review the administrative record.

- November 12, 2021: Plaintiff will inform Defendants in writing as to any materials that it asserts are necessary to supplement or complete the administrative record. The parties will then confer, in good faith, in an attempt to resolve any issues informally.
- December 16, 2021: If, at the conclusion of the conferral process, the parties cannot come to a resolution regarding objections to the administrative record, Plaintiff will file a motion to supplement, complete, and/or correct the administrative record.
- January 13, 2021: Defendants will file a brief in opposition to Plaintiff's motion to supplement or complete the administrative record, if any.
- January 27, 2021: Plaintiff will file a reply in support of their motion to supplement or complete the administrative record, if any.
- If Plaintiff moves to supplement, complete, and/or correct the administrative record, then within 10 days after the District Court's resolution of the motion the Parties will file a Joint Status Report with the Court in which the parties will propose a schedule for summary judgment briefing.

The above represents the parties' scheduling agreement as to the administrative record only. In the event Plaintiff does not move to complete or supplement the administrative record, the parties agree to the summary judgment briefing schedule outlined below:

- December 16, 2021: Plaintiff will file a Motion for Summary Judgment and memorandum in support. Plaintiff's Summary Judgment Motion and Memorandum shall be limited to 40 pages in length, excluding caption, signature block, and any certificates of service or compliance.
- January 20, 2022: Defendants will file a combined Cross-Motion for Summary Judgment and memorandum in support. Defendants' combined Cross-Motion for

Summary Judgment and memorandum in support shall be limited to 60 pages in length, excluding caption, signature block, and any certificates of service or compliance.

- February 17, 2022: Plaintiff will file a combined Response to Defendants' Cross-Motion for Summary Judgment and Reply in Support of Plaintiff's Motion for Summary Judgment. Plaintiff's combined Response and Reply shall be limited to 40 pages in length, excluding caption, signature block, and any certificates of service or compliance.
- March 3, 2022: Defendants will file a Reply in Support of their Cross-Motion for Summary Judgment. Defendants' Reply shall be limited to 15 pages in length, excluding caption, signature block, and any certificates of service or compliance.

Dated: October 6, 2021

TODD KIM
Assistant Attorney General
United States Department of Justice

/s/ Dustin J. Weisman
DUSTIN J. WEISMAN (CO Bar 44818)
ERIKA NORMAN (CA Bar 268425)
Trial Attorneys
United States Department of Justice
Natural Resources Section
150 M Street NE
Washington, DC 20002
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Telephone: (202) 598-0475 (Norman)
Facsimile: (202) 305-0506
dustin.weisman@usdoj.gov
erika.norman@usdoj.gov

Attorneys for Defendants

/s/Tom Buchele

Tom Buchele, OSB # 081560
Earthrise Law Center
Lewis & Clark Law School
10101 S. Terwilliger Blvd.
Portland OR 97219-7799
Tel: 503-768-6736
Fax: 503-768-6642
Email: tbuchele@lclark.edu

/s/Cooper Rodgers

Cooper Rodgers, OSB # 194439
6926 SE Ogden Street
Portland OR, 97206
Tel: 818-667-6657
Email:
cooper@bluemountainbiodiversityproject.org

Attorneys for Plaintiff